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**Four J Food Corp. d/b/a Park Avenue Gourmet and Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC.** Case 2-CA-34203

October 28, 2002

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks Summary Judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on December 7, 2001, the General Counsel issued the complaint on January 24, 2002, against Four J Food Corp. d/b/a Park Avenue Gourmet, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On April 15, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On April 19, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 8, 2002, notified the Respondent that unless an answer was received by March 22, 2002, a Motion for Summary Judgment would be filed.<sup>1</sup>

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> Copies of the March 8 letter were served on Seak Kwang Ha, president and owner of the Respondent, and Hyon Song, registered with the State of New York as the Respondent's agent for service of process, by certified mail, return receipt requested. The envelopes containing this letter, however, were returned to the Region as unclaimed/refused. The Respondent's failure or refusal to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *National Automatic Sprinkler*, 307 NLRB 481, 482 fn. 1 (1992); accord: *Summit Mechanical Contractors, Inc.*, 316 NLRB 699 fn. 2 (1995). In any event, that a reminder letter may not have been received by the Respondent does not warrant denying the General Counsel's Motion for Summary Judgment. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a New York corporation with an office and principal place of business located at 407 Park Avenue, New York, New York, has been engaged in the operation of a supermarket that sells food and other items to the public. Annually, the Respondent, in conducting its business operations described above, purchases goods and materials valued in excess of \$5000 directly from suppliers located outside the State of New York, and derives gross revenues in excess of \$500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Chris Ha held the position of the Respondent's president and owner, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent acting on its behalf.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time employees employed by the Employer at its facility located at 407 Park Avenue, New York, New York.  
Excluded: All other employees, and guards, professional employees and supervisors, as defined in the Act.

On August 31, 2001, the Union was certified as the exclusive collective-bargaining representative of the unit, and since that date, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Union, on about August 30, 2001, by letter; on about September 4, 2001, by telephone call; and on about September 10, 2001, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about August 31, 2001, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about September 10, 2001, the Union, by letter, has requested that the Respondent furnish the Union with the names, job titles, weekly hours, and weekly pay of the unit employees. This information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about September 10, 2001, the Respondent, by Chris Ha, has failed and refused to furnish the Union with the information requested by it.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing, since August 31, 2001, to recognize and bargain with the Union, we shall order the Respondent to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

In addition, we shall order the Respondent to furnish the Union with the information it requested on September 10, 2001, i.e., the names, job titles, weekly hours, and weekly pay of the unit employees.

#### ORDER

The National Labor Relations Board orders that the Respondent, Four J Food Corp. d/b/a Park Avenue Gourmet, New York, New York, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the appropriate unit set forth below. The appropriate unit is:

Included: All full-time and regular part-time employees employed by the Employer at its facility located at 407 Park Avenue, New York, New York.

Excluded: All other employees, and guards, professional employees and supervisors, as defined in the Act.

(b) Failing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain in good faith with Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish the Union with the information it requested on September 10, 2001, specifically, the names, job titles, weekly hours, and weekly pay of the unit employees.

(c) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix".<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 28, 2002

Wilma B. Liebman,

Member

<sup>2</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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William B. Cowen,	Member
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Michael J. Bartlett,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC as the exclusive

bargaining representative of our employees in the appropriate unit set forth below. The appropriate unit is:

Included: All full-time and regular part-time employees employed by us at our facility located at 407 Park Avenue, New York, New York.

Excluded: All other employees, and guards, professional employees and supervisors, as defined in the Act.

WE WILL NOT fail to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain in good faith with Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of our employees in the unit, and put in writing and sign any agreement reached with the Union.

WE WILL furnish the Union with the information it requested on September 10, 2001, specifically, the names, job titles, weekly hours, and weekly pay of the unit employees.

FOUR J FOOD CORP. d/b/a PARK AVENUE GOURMET